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FILED
DEC 20 2011
DEPARTMENT OF REAL ESTATE

By C. _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) CASE NO. H-33283 LA
JOHN DAVID RUNKLE,) L-2006100642
Respondent.)

ORDER MODIFYING DECISION

PURSUANT TO STIPULATED JUDGMENT AND REMAND

On or about August 12, 2008, a Decision was rendered herein and became effective on September 2, 2008. Said Decision suspended all licenses and license rights of Respondent JOHN DAVID RUNKLE (hereinafter referred to as "Respondent") for a period of six (6) months from the effective date of said Decision, provided, however, that said six-month suspension was stayed for one (1) year upon certain terms and conditions.

In connection with the rendering of said Decision on August 12, 2008, Respondent petitioned the Superior Court of the State of California in and for the County of San Bernardino, in Case No. CIV SS 703887, for a Writ of Administrative Mandamus to

1 compel the Real Estate Commissioner to vacate and set aside his
2 Decision.

3 In consideration for the dismissal with prejudice and
4 in complete settlement of Respondent's aforementioned Petition
5 for Writ of Administrative Mandamus, the following order is made:

7 ORDER

8 The requirement of "moral turpitude" was stricken from
9 the language of Business and Professions Code section 10177,
10 subdivision (b), effective January 1, 2008. (Stats. 2007, ch.
11 140, § 1.)

12 NOW, THEREFORE, IT IS ORDERED that the August 2008
13 Decision herein is hereby modified in the following respects:

14 (1) the finding of moral turpitude is stricken;

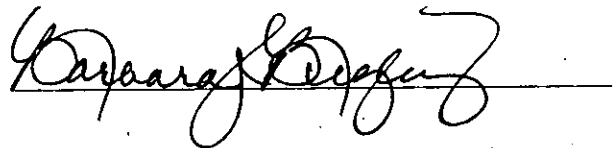
15 (2) the disciplinary provision of a stayed six-month
16 suspension is stricken;

17 (3) the license of Respondent JOHN DAVID RUNKLE is
18 publicly reprovod.

19 This Order shall become effective immediately.

20 DATED: 12/16, 2011.

21 Barbara J. Bigby
22 Acting Real Estate Commissioner

23 
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26
27

BEFORE THE DEPARTMENT OF REAL ESTATE

By C.A.

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of) No. H-33283 LA
JOHN DAVID RUNKLE,)
Respondent.)
L-2006100642

DECISION

The Proposed Decision dated July 9, 2008, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections and changes are made to the Proposed Decision:

Page 8, first paragraph, line 1, "contenre" is amended to read "contendere".

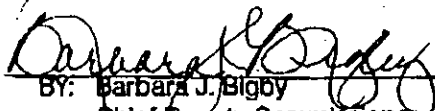
Page 8, paragraph No. 4, line 2, "subdivisions(8), is amended to read "subdivision (a)(8)".

Page 9, paragraph No. 5, line 1, "and/or" is amended to read "and".

This Decision shall become effective at 12 o'clock noon on September 2, 2008.

IT IS SO ORDERED 8-12-08

JEFF DAVI
Real Estate Commissioner


BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

JOHN DAVID RUNKLE.,

Case No. H-33283 LA

OAH No. L 2006100642

Respondent.

PROPOSED DECISION – AFTER SECOND REMAND

PROCEDURAL SETTING

On February 22, 2007, this matter was heard by Administrative Law Judge N. Gregory Taylor. Following the filing of briefs by the parties, the matter was submitted for decision on March 30, 2007. Judge Taylor submitted his proposed decision to the Department of Real Estate (Department) on April 26, 2007.

On May 31, 2007, the Real Estate Commissioner rendered a Decision herein that revoked the real estate broker license and licensing rights of Respondent John David Runkle (Respondent), but granted Respondent rights to a restricted broker license, subject to certain terms and conditions. Said decision was to become effective on June 25, 2007.

On June 15, 2007, Complainant petitioned for reconsideration of said Decision. Both Respondent and Complainant submitted arguments for reconsideration. The Commissioner concluded that good cause had been presented for reconsideration of the Decision of May 31, 2007, for the limited purpose of correcting any errors and determining whether the disciplinary action therein imposed should be reduced. The Order Granting Reconsideration was issued on July 19, 2007.¹ Said order allowed Respondent to file written argument

¹ Prior to learning that reconsideration had been granted, on July 23, 2007, Respondent filed a Petition for a Writ of Administrative Mandamus before the San Bernardino County Superior Court, Case No. CIV-SS703887. Said proceedings have been held in abeyance pending the outcome of this administrative

in further support of his petition for reconsideration by July 30, 2007. Complainant was given ten days thereafter to file any written reply to Respondent's argument.

On July 30, 2007, Respondent filed his Brief after Grant of Reconsideration urging no discipline, or a less stringent penalty than the revocation of his license with issuance of a restricted license, as called for in the Decision of May 31, 2007. On August 6, 2007, Complainant filed a reply brief to Respondent's Brief After Grant of Reconsideration. On August 8, 2007, Respondent filed a further brief after grant of reconsideration in response to Complainant's reply brief. Said further argument was tardy based on the Order Granting Reconsideration of July 19, 2007 and was not considered as part of the record.

On August 29, 2007, the Real Estate Commissioner rendered a Decision in the above-entitled matter. Said decision was to become effective on September 25, 2007 but was stayed by separate order to October 25, 2007.

On September 14, 2007, Respondent made a request for the disqualification of the Commissioner:

On October 5, 2007, Respondent petitioned for reconsideration of the Decision of August 29, 2007.

On October 23, 2007, the Real Estate Commissioner found that there was good cause to reconsider the Decision of August 29, 2007 and reconsideration was granted. This matter was remanded to N. Gregory Taylor, Administrative Law Judge of the Office of Administrative Hearings, pursuant to Government Code sections 11521, subdivision (b) and 11517, subdivision (c).

On February 8, 2008, a hearing on the remand of this matter was held before Judge Taylor. At the conclusion of the hearing the matter was taken under submission. On March 7, 2008, Judge Taylor issued his Proposed Decision after Remand.

On April 8 [10]², 2008, the Real Estate Commissioner adopted the Proposed Decision after Remand as the decision of the Commissioner. The Decision was to become effective on April 30, 2008.

On April 23, 2008, Respondent requested a stay of the enforcement of the Commissioner's Decision after Remand. On April 29, 2008, Respondent filed his Argument for Reconsideration of the April 10, 2008 Decision.

proceeding. (It was also reported by Respondent that a petition for writ of mandate was filed in the Court of Appeal for the Fourth Appellate District, Division Two.)

² Interchangeably referred to as the Opinion of April 8 or 10.

On April 30, 2008, the Commissioner stayed the effective date of the April 8, 2008 Decision for a period of ten days to consider Respondent's petition for reconsideration.

On May 5, 2008, the Real Estate Commissioner found good cause to reconsider the Decision of April 8, 2008 and granted the request for reconsideration. In accordance with Government Code sections 11521 and 11517, the case was referred to N. Gregory Taylor, Administrative Law Judge for reconsideration of the Decision of April 8, 2008.

On June 26, 2008, the hearing after Second Remand was held before Judge Taylor.

I.

At the hearing on February 22, 2007 Jennifer A. Granat, Staff Counsel, represented Maria Suarez, (Complainant), a Deputy Real Estate Commissioner in the Department of Real Estate (Department), State of California. Mary E. Work, Attorney at Law, represented John David Runkle (Respondent) who was present during the hearing.

At the beginning of the February 22, 2007 hearing, Respondent made a motion to strike Paragraphs IV and V of the Accusation. These paragraphs allege that Respondent failed to reveal his criminal conviction on his license renewal application to the Department. It was decided to address this issue as part of the decision to be rendered in this case.

At the February 22, hearing, Oral and documentary evidence was received, and the matter was argued. The record was held open following the hearing to permit counsel to present closing briefs specifically including the issue of moral turpitude. On March 9, 2007, Complainant filed her brief on moral turpitude. Respondent filed his brief on March 23, 2007. Complainant filed a Reply Brief and the case was submitted for decision on March 30, 2007. (Complainant's Briefs are designated as State's Exhibits 7 and 8 for identification. Respondent's Brief is designated as Exhibit H for identification.)

Upon remand of this matter by the Real Estate Commissioner back to N. Gregory Taylor, Administrative Law Judge, a hearing before Judge Taylor was held February 8, 2008. Cheryl Keily, Staff Counsel, represented Complainant Maria Suarez. Edward A. Hoffman, Attorney at Law, represented Respondent John David Runkle. (Mr. Hoffman was substituted as Respondent's counsel on July 5, 2007.)

Oral argument was held and the matter was submitted for decision on February 8, 2008. Judge Taylor issued his Proposed Decision after Remand to the Real Estate Commissioner on March 7, 2008.

Upon a second referral of this matter by the Real Estate Commissioner to N. Gregory Taylor, a further hearing before Judge Taylor was held on June 26, 2008. Cheryl Keily, Staff Counsel, represented Complainant Maria Suarez. Edward A. Hoffman, Attorney at Law, represented Respondent John David Runkle.

Prior to the hearing, the parties filed the following briefs:

- Respondent's Brief on Rehearing of Decision of April 10, 2008 – June 6, 2008
- Designated as Respondent's Exhibit I
- Complainant's Reply Brief - June 12, 2008 – Designated as State's Exhibit 9
- Respondent's Reply Brief on Rehearing of Decision of April 10, 2008 – June 20, 2008 – Designated as Respondent's Exhibit J³

Oral argument was held and the matter was submitted for decision on June 26, 2008.

II

FACTUAL FINDINGS

1. Complainant filed the Accusation in this proceeding in her official capacity.
2. At all times mentioned herein, Respondent was and is presently licensed by the Department as a real estate broker under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code. His broker license expires on October 17, 2008, unless renewed.⁴
3. Respondent was originally licensed by the Department as a real estate salesperson on August 8, 1989 and as broker on July 2, 1992.
4. On October 13, 2004, Respondent filed a Broker Renewal Application with the Department. This application was completed in handwriting. Respondent answered "Yes" to Question 3 on the application indicating that he had been convicted of a violation of law. He also supplied information on his criminal conviction in response to Question 22.
5. On October 15, 2004, Respondent filed a second Broker Renewal Application with the Department. This application was filed using an on-line computer connection. In order to get the Department's computer to accept the application, Respondent had to answer "No" to Question 3 regarding whether the applicant had been convicted of a crime. (If a person answered yes to the question, the person was told to manually file the

³ Respondent additionally filed a copy of the decision in *In the Matter of Klein* (1994) 3 Cal. State Bar Ct. Rptr. 1. This is designated as Respondent's Exhibit K.

⁴ Respondent also has an officer license from the Department which expires on February 2, 2009.

application.) Respondent's reason for filing the second application was to insure that there was no interruption in the effectiveness of his license. Respondent is a broker. He has several offices and a number of real estate salespersons working under his license. If there was a break in the continuity of his license, all of his salespeople would be unable to work under his license. Both applications were for the renewal of the same license. A manually completed license takes longer for the Department to process.

6. Respondent's filing of the two applications taken as a whole disclose his criminal conviction for purposes of informing the Department of that occurrence. There was no intent of Respondent to deceive the Department concerning his conviction.

7. On July 29, 2004 in the California Superior Court, County of San Bernardino, in Case No. FSB038254, as part of a plea agreement, Respondent pled nolo contendere to and was convicted of violating Penal Code section 502, subdivision (c) (7), knowingly and without permission accessing or causing to be accessed any computer, computer system, or computer network, a misdemeanor. Respondent's plea was to a LIO (a lesser included offense) in count 1 of the felony complaint. The court placed Respondent on Conditional and Revocable Release for a period of thirty-six months upon certain terms and conditions including paying a \$110 fine and having no contact with the victim.

8. On January 30, 2006, the Court found that Respondent had fulfilled the terms and conditions of his probation and expunged the conviction pursuant to Penal Code section 1203.4.

9. The facts and circumstances leading to Respondent's conviction are as follows: Respondent and a woman named Cass worked together at a real estate office. Cass stopped working with Respondent. Subsequently, in 2001-2002, they began a romantic relationship. During this time, Respondent loaned Cass money for an emergency operation. Cass repaid only a portion of the loaned amount. Early in 2002, their relationship ended acrimoniously. Both Respondent and Cass engaged in harassing behavior toward one another. Respondent decided to sue Cass for the unpaid balance on his loan to her. Respondent asserts that, prior to commencing the litigation he ran a credit check on Cass to determine if she had sufficient assets to make a lawsuit worthwhile. Checking a person's credit for this purpose is not authorized by law and was an invasion of Cass' privacy. Respondent felt that such a check was legally permissible but pled nolo contendere to a single count of unauthorized acquisition of credit information due to the severe penalty he faced if otherwise convicted. Respondent has taken full responsibility of his actions that resulted in his conviction.

10. Since then, Respondent and Cass have entered into a formal stipulation agreeing to have no contact with each other and that any communication between them will be conducted through their attorneys.

11. Respondent owns the largest real estate office in the City of San Bernardino. He also has real estate offices in six other states. These offices handle residential sales and mortgages.

12. As a result of his conviction, Respondent's attitude regarding the use of credit reports has changed. He now considers ordering such a report to be a very serious matter. He realizes the importance of getting written authorization to make requests for credit information.

13. As a result of his conviction, Respondent has changed the procedures in his office to insure that credit reports are ordered only for legally authorized purposes. Such reports can only be ordered by the office managers.

14. Respondent has no other criminal convictions.

15. No other administrative actions have been filed against Respondent's real estate licenses.

16. Respondent served three years in the Army and was awarded the Army Achievement Medal.

17. Respondent attended California State University Fullerton majoring in business and is ten credits short of being eligible to graduate.

18. Respondent is now married. He and his wife live in Montana. His 20 year old son spends summers with him.

19. Respondent works with a preservation group seeking to protect elk and grizzly bears.

20. An executive vice-president of a title company, who has known Respondent for more than five years and has worked with him, testified for Respondent as a character witness. In her opinion, Respondent has a good reputation and is honest. She was aware of Respondent's criminal conviction and it did not adversely affect her opinion of him.

21. An employee of Respondent's real estate office testified as a character witness. He stated that Respondent had taught him the real estate business and had always been there for the employee. He would recommend Respondent to everyone.⁵

⁵ The employee was unaware of Respondent's criminal conviction.

III

LEGAL CONCLUSIONS

1. These proceedings are brought under the provisions of Business and Professions Code section 10100 et seq. and Government Code sections 11500 through 11528.

2. Cause does not exist, pursuant to Business and Professions Code section 498 and/or 10177, subdivision (a), to suspend or revoke Respondent's real estate licenses and licensing rights in that Respondent did disclose his criminal conviction on his license renewal application to the Department.

3. Respondent's misdemeanor conviction for violating Penal Code section 502, subdivision (c) (7), knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network, involves moral turpitude. Penal Code section 502 was enacted in 1987 as part of the "Comprehensive Computer Data Access and Fraud Act." It is included in the Penal Code in Part 1, Title 13, "Of Crimes Against Property", Chapter 5 "Larceny (Theft)." With regard to crimes specified in Penal Code section 502, the Legislature found:

"It is the intent of the legislature in enacting this section to expand the degree of protection afforded to individuals . . . from tampering, interference, damage and unauthorized access to lawfully created computer data and computer systems. * * * The Legislature further finds and declares that the protection of the integrity of all types and forms of lawfully created computers, computer systems, and computer data is vital to the protection of the privacy of individuals . . .
." Penal Code section 502 subdivision (a).

The statute's plain language illustrates the Legislature's determination that the acts criminalized by the section constitute serious violations of the fundamental privacy rights of individuals, rights protected by the United States and California Constitutions. Crimes of moral turpitude have been described as those that involve "baseness, vileness, or depravity in the private and social duties which a man owes to his fellowmen or to society in general, contrary to the accepted and customary rule of right and duty between man and man." *People v. Forster* (1994) 29 Cal.App.4th 1746, 1757. Clearly, Penal Code section 502 offenses necessarily involve moral turpitude.

From the foregoing it is clear that the violation of Penal Code section 502, subdivision (c) (7) is a crime of moral turpitude. This conclusion is confirmed by an examination of the Respondent's conviction. Respondent entered a nolo contendere plea to violating Penal Code section 502, subdivision (c) (7), knowingly and without permission accessing or causing to be accessed any computer or computer system. This activity clearly invades the fundamental right of privacy sought to be protected by the

statute. See: *Padilla v. State Personnel Board* (1992) 8 Cal.App.4th 1136, 1140-1141; *In re Kelley* (1990) 52 Cal.3d 487.⁶

Respondent seeks to avoid the effect of his nolo ^{contendere} ~~contendere~~ plea by arguing that he believed that he had a right to access the victim's computer information at the time the access was accomplished. Respondent is prevented from making such an argument because his nolo contendere plea is conclusive evidence that Respondent "knowingly" and "without permission" accessed the victim's credit information. *Arneson v. Fox* (1980) 440, 446-450; *Arnstein v. California State Board of Pharmacy*, (1968) 265 Cal.App.2d 179. Respondent's belief regarding the lack of criminality of his conduct in no way affects the consequences of his plea agreement and the fact that a violation of the statute is a crime involving moral turpitude. See *People v. McLaughlin* (1952) 111 Cal.App.2d 781, 788-789.

Respondent cites three California State Bar cases ⁷ for the assertion that a crime committed in a genuine but mistaken belief that it was legal does not involve moral turpitude. The issue in those cases was whether a violation of Business and Professions Code section 6106, the commission of an act involving moral turpitude, had occurred. The cases cited by Respondent are readily distinguished from this case. In those cases, the attorneys who were defending themselves had not been convicted of any crime. Instead, the State Bar was attempting to prove that they had committed an act of moral turpitude, outside of the criminal justice system. The attorneys in those cases were able to prove their lack of sufficient intent to do wrong and to establish that they had not violated the section. The inquiry in criminal cases is whether the criminal statute violated is of the type that fits the criminal definition of moral turpitude.

Respondent's cited cases are distinguishable from the present case. No violation of the statute in question occurred in those cases. In the present matter Respondent pled to "knowingly" and "without permission" violating the statute in question. A consequence of that violation is that moral turpitude attached because of the nature of the statutory proscription.

4. Respondent's criminal conviction, pursuant to California Code of Regulations, title 10, section 2910, subdivisions ~~(8)~~, is substantially related to the qualifications,
(d)(8)

⁶ It should be noted that the specific subsection of Penal Code section 502 of which Respondent was convicted (Penal Code section 502, subdivision (c) (7)) can be charged as a felony under appropriate circumstances. The degree and penalty for such a violation is set forth in Penal Code section 502, subdivision (d) (3). In Respondent's case, the plea agreement set the degree of the offense as a misdemeanor – Penal Code section 502, subdivision (d) (3) (B). At the misdemeanor level, the offense involved the expenditure by the victim of an amount not greater than \$5,000. Clearly, the legislature in enacting the subsection (c) (7) recognized the seriousness of the offense consistent with the legislative findings.

⁷ *Sternlieb v. State Bar* (1990) 52 Cal.3d 317; *In re Silverton* (2001) 4 Cal. State Bar Ct. Rptr. 252 and *In re Klein* (1994) 3 Cal. State Bar Ct. Rptr. 1, 10.

functions, or duties of a licensee of the Department in that it involved the doing of an unlawful act with the intent of conferring an economic benefit upon Respondent.

5. By virtue of Business and Professions Code sections 490 and ~~or~~ 10177, subdivision (b), cause exists for the suspension or revocation of Respondent's license and license rights under the Real Estate Law.

6. The Department's Criteria of Rehabilitation, set forth in California Code of Regulations, title 10, section 2912, provides factors to be considered for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee. It has been more than two years since Respondent's conviction; he has no history of other convictions; he paid all restitution, fines and fees associated with his criminal case; his probation was terminated early and the matter has been expunged from his record; he has corrected his business practices to the extent he has informed himself of the limits of his credit report service access and it is most unlikely that he will ever use the service beyond checking the credit for a prospective borrower who has given advance permission for the inquiry; he no longer associates with Cass and has had no contact with her since his criminal matter was resolved, further, they entered into an agreement specifying all contact between them would be through their attorneys; he is married and enjoys a good relationship with his college-age son whom Respondent supports; Respondent is involved with organizations that promote the preservation of wildlife; and has taken full responsibility for the fact that his actions were in violation of law and has offered assurances that he will not resort to this type of collection effort in the future. From the foregoing, it appears that Respondent is making good progress in complying with the Department's criteria. Additional time to insure this compliance is necessary from the standpoint of protecting the public.

Under Business and Professions Code section 10177, the degree of discipline is a matter that is within the discretion of the Real Estate Commissioner. The Department needs to ensure that its licensees handle private information in accordance with the law and with the utmost integrity. Respondent's crime – the unauthorized computer access of private, highly sensitive financial information – is precisely the sort of threat to the public which the Department is charged with preventing. In order to assure that the public is protected from any relapse by Respondent in his compliance with the Department's regulations, a suspended license stayed for a period of time provides the Department with appropriate controls in this case.⁸

⁸ This revised conclusion takes into consideration the fact that Respondent was convicted of a misdemeanor and not a felony as stated in the original proposed decision in this matter.

ORDER

All licenses and licensing rights of Respondent John David Runkle under the Real Estate Law are suspended for a period of six months from the effective date of, this Decision; provided, however, that said six month suspension shall be stayed for one (1) year upon the following terms and conditions:

1. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and

2. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary; action occurred within one (1) year of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

DATED: July 9, 2008.


N. GREGORY TAYLOR
Administrative Law Judge
Office of Administrative Hearings

FILED
MAY 8, 2008
DEPARTMENT OF REAL ESTATE

By C.2

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	No. H-33283 LA
JOHN DAVID RUNKLE,	)	L-2006100642
Respondent.	)	

NOTICE OF ORDER GRANTING RECONSIDERATION AND
REMANDING CASE TO ADMINISTRATIVE LAW JUDGE FOR
RECONSIDERATION OF DECISION OF APRIL 8, 2008
(Sections 11521 and 11517 of the Government Code)

TO: JOHN DAVID RUNKLE, Respondent:

YOU ARE HEREBY NOTIFIED that on April 8, 2008, a Decision was rendered in the above-entitled matter, which was to become effective on April 30, 2008. Said Decision was stayed by separate Order.

On April 29, 2008, Respondent, JOHN DAVID RUNKLE, petitioned for reconsideration of the Decision of April 8, 2008.

I find that there is good cause to reconsider the Decision of April 8, 2008. Reconsideration is granted.

1 IT IS HEREBY ORDERED, in accordance with Sections 11521
2 and 11517 of the Government Code, that this case be referred to
3 N. GREGORY TAYLOR, Administrative Law Judge of the Office of
4 Administrative Hearings, for reconsideration of the Decision of
5 April 8, 2008.

6 IT IS SO ORDERED

5-5-08

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8 JEFF DAVI
Real Estate Commissioner
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24 cc: John David Runkle
25 Edward A. Hoffman, Esq.
26 Elisa B. Wolfe-Donato, Esq.
27 Maria Suarez
Sacto
OAH

FILED

APR 30 2008

DEPARTMENT OF REAL ESTATE

By Juan Armenta

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
JOHN DAVID RUNKLE,) DRE NO. H-33283 LA
Respondent.) OAH NO. L-2006100642

ORDER STAYING EFFECTIVE DATE

On April 8, 2008, a Decision was rendered in the above-entitled matter to become effective April 30, 2008.

IT IS HEREBY ORDERED that the effective date of the Decision of April 8, 2008, is stayed for a period of ten (10) days to consider Respondent's petition for reconsideration.

The Decision of April 8, 2008, shall become effective at 12 o'clock noon on May 9, 2008.

DATED: April 30, 2008.

JEFF DAVI
Real Estate Commissioner

By: William E. Moran
WILLIAM E. MORAN
Assistant Commissioner, Enforcement

FILED
April 10, 2008
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By C. Ben

* * * * *

In the Matter of the Accusation of) No. H-33283 LA
JOHN DAVID RUNKLE,) L-2006100642
Respondent.)

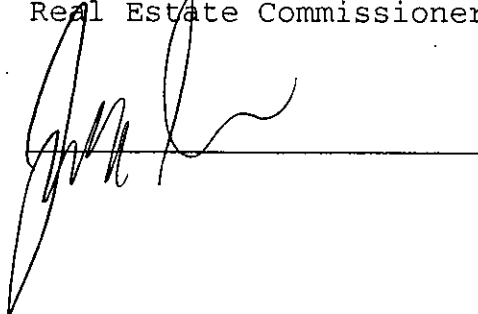
DECISION

The Proposed Decision dated March 7, 2008,
of the Administrative Law Judge of the Office of
Administrative Hearings, is hereby adopted as the Decision
of the Real Estate Commissioner in the above-entitled
matter.

This Decision shall become effective at 12 o'clock
noon on April 30, 2008.

IT IS SO ORDERED

48.08
JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

JOHN DAVID RUNKLE.,

Respondent.

Case No. H-33283 LA

OAH No. L 2006100642

PROPOSED DECISION – AFTER REMAND

PROCEDURAL SETTING

On February 22, 2007, this matter was heard by Administrative Law Judge N. Gregory Taylor. Following the filing of briefs by the parties, the matter was submitted for decision on March 30th, 2007. Judge Taylor submitted his proposed decision to the Department of Real Estate (Department) on April 26, 2007.

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in further support of his petition for reconsideration by July 30, 2007. Complainant was given ten days thereafter to file any written reply to Respondent's argument.

On July 30, 2007, Respondent filed his Brief After Grant of Reconsideration urging no discipline, or a less stringent penalty than the revocation of his license with issuance of a restricted license, called for in the Decision of May 31, 2007. On August 6, 2007, Complainant filed a reply brief to Respondent's Brief After Grant of Reconsideration. On August 8, 2007, Respondent filed a further brief after grant of reconsideration in response to Complainant's reply brief. Said further argument was tardy based on the Order Granting Reconsideration of July 19, 2007 and was not considered as part of the record.

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On September 14, 2007, Respondent made a request for the disqualification of the Commissioner.

On October 5, 2007, Respondent petitioned for reconsideration of the Decision of August 29, 2007.

On October 23, 2007, the Real Estate Commissioner found that there was good cause to reconsider the Decision of August 29, 2007 and reconsideration was granted. This matter was referred to N. Gregory Taylor, Administrative Law Judge of the Office of Administrative Hearings, pursuant to Government Code sections 11521, subdivision (b) and 11517, subdivision (c).

I.

Administrative Law Judge N. Gregory Taylor, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on February 22, 2007.

Jennifer A. Granat, Staff Counsel, represented Maria Suarez, (Complainant), a Deputy Real Estate Commissioner in the Department of Real Estate (Department), State of California.

Mary E. Work, Attorney at Law, represented John David Runkle (Respondent) who was present during the hearing.

At the beginning of the hearing, Respondent made a motion to strike Paragraphs IV and V of the Accusation. These paragraphs allege that Respondent failed to reveal his criminal conviction on his license renewal application to the Department. It was decided to address this issue as part of the decision to be rendered in this case.

Oral and documentary evidence was received, and the matter was argued. The record was held open following the hearing to permit counsel to present closing briefs specifically including the issue of moral turpitude. On March 9, 2007, Complainant filed her brief on moral turpitude. Respondent filed his brief on March 23, 2007. Complainant filed a Reply Brief and the case was submitted for decision on March 30, 2007. (Complainant's Briefs are designated as State's Exhibits 7 and 8 for identification. Respondent's Brief is designated as Exhibit H for identification.)

Upon referral of this matter by the Real Estate Commissioner back to N. Gregory Taylor, Administrative Law Judge, a hearing before Judge Taylor was held February 8, 2008.

Cheryl Keily, Staff Counsel, represented Complainant Maria Suarez.

Edward A. Hoffman, Attorney at Law, represented Respondent John David Runkle. (Mr. Hoffman was substituted as Respondent's counsel on July 5, 2007.)

Oral argument was held and the matter was submitted for decision on February 8, 2008.

II

FACTUAL FINDINGS

1. Complainant filed the Accusation in this proceeding in her official capacity.
2. At all times mentioned herein, Respondent was and is presently licensed by the Department as a real estate broker under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code. His broker license expires on October 17, 2008, unless renewed.²
3. Respondent was originally licensed by the Department as a real estate salesperson on August 8, 1989 and as broker on July 2, 1992.
4. On October 13, 2004, Respondent filed a Broker Renewal Application with the Department. This application was completed in handwriting. Respondent answered "Yes" to Question 3 on the application indicating that he had been convicted of a

² Respondent also has an officer license from the Department which expires on February 2, 2009.

violation of law. He also supplied information on his criminal conviction in response to Question 22.

5. On October 15, 2004, Respondent filed a second Broker Renewal Application with the Department. This application was filed using an on-line computer connection. In order to get the Department's computer to accept the application, Respondent had to answer "No" to Question 3 regarding whether the applicant had been convicted of a crime. (If a person answered yes to the question, the person was told to manually file the application.) Respondent's reason for filing the second application was to insure that there was no interruption in the effectiveness of his license. Respondent is a broker. He has several offices and a number of real estate salespersons working under his license. If there was a break in the continuity of his license, all of his salespeople would be unable to work under his license. Both applications were for the renewal of the same license. A manually completed license takes longer for the Department to process.

6. Respondent's filing of the two applications taken as a whole disclose his criminal conviction for purposes of informing the Department of that occurrence. There was no intent of Respondent to deceive the Department concerning his conviction.

7. On July 29, 2004 in the California Superior Court, County of San Bernardino, in Case No. FSB038254, as part of a plea agreement, Respondent pleaded nolo contendere to and was convicted of violating Penal Code section 502, subdivision (c) (7), knowingly and without permission accessing or causing to be accessed any computer, computer system, or computer network, a misdemeanor. Respondent's plea was to a LIO (a lesser included offense) in count 1 of the felony complaint. The court placed Respondent on Conditional and Revocable Release for a period of thirty-six months upon certain terms and conditions including paying a \$110 fine and having no contact with the victim.

8. On January 30, 2006, the Court found that Respondent had fulfilled the terms and conditions of his probation and expunged the conviction pursuant to Penal Code section 1203.4.

9. The facts and circumstances leading to Respondent's conviction are as follows: Respondent and a woman named Cass worked together at a real estate office. Cass stopped working with Respondent. Subsequently, in 2001-2002, they began a romantic relationship. During this time, Respondent loaned Cass money for an emergency operation. Cass repaid only a portion of the loaned amount. Early in 2002, their relationship ended acrimoniously. Both Respondent and Cass engaged in harassing behavior toward one another. Respondent decided to sue Cass for the unpaid balance on his loan to her. Respondent asserts that, prior to commencing the litigation he ran a credit check on Cass to determine if she had sufficient assets to make a lawsuit worthwhile. Checking a person's credit for this purpose is not authorized by law and was an invasion of Cass' privacy. Respondent felt that such a check was legally permissible but pled guilty to a single count of unauthorized acquisition of credit information due to

the severe penalty he faced if otherwise convicted. Respondent has taken full responsibility of his actions that resulted in his conviction.

10. Since then, Respondent and Cass have entered into a formal stipulation agreeing to have no contact with each other and that any communication between them will be conducted through their attorneys.

11. Respondent owns the largest real estate office in the City of San Bernardino. He also has real estate offices in six other states. These offices handle residential sales and mortgages.

12. As a result of his conviction, Respondent's attitude regarding the use of credit reports has changed. He now considers ordering such a report to be a very serious matter. He realizes the importance of getting written authorization to make requests for credit information.

13. As a result of his conviction, Respondent has changed the procedures in his office to insure that credit reports are ordered only for legally authorized purposes. Such reports can only be ordered by the office managers.

14. Respondent has no other criminal convictions.

15. No other administrative actions have been filed against Respondent's real estate licenses.

16. Respondent served three years in the Army and was awarded the Army Achievement Medal.

17. Respondent attended California State University Fullerton majoring in business and is ten credits short of being eligible to graduate.

18. Respondent is now married. He and his wife live in Montana. His 20 year old son spends summers with him.

19. Respondent works with a preservation group seeking to protect elk and grizzly bears.

20. An executive vice-president of a title company, who has known Respondent for more than five years and has worked with him, testified for Respondent as a character witness. In her opinion, Respondent has a good reputation and is honest. She was aware of Respondent's criminal conviction and it did not adversely affect her opinion of him.

21. An employee of Respondent's real estate office testified as a character witness. He stated that Respondent had taught him the real estate business and had always been there for the employee. He would recommend Respondent to everyone.³

III

LEGAL CONCLUSIONS

1. These proceedings are brought under the provisions of Business and Professions Code section 10100 et seq. and Government Code sections 11500 through 11528.

2. Cause does not exist, pursuant to Business and Professions Code section 498 and/or 10177, subdivision (a), to suspend or revoke Respondent's real estate licenses and licensing rights in that Respondent did disclose his criminal conviction on his license renewal application to the Department.

3. Respondent's misdemeanor conviction for violating Penal Code section 502, subdivision (c) (7), knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network, involves moral turpitude. Penal Code section 502 was enacted in 1987 as part of the "Comprehensive Computer Data Access and Fraud Act." It is included in the Penal Code in Part 1, Title 13, "Of Crimes Against Property", Chapter 5 "Larceny (Theft)." With regard to crimes specified in Penal Code section 502, the Legislature found:

"It is the intent of the legislature in enacting this section to expand the degree of protection afforded to individuals . . . from tampering, interference, damage and unauthorized access to lawfully created computer data and computer systems. * * * The Legislature further finds and declares that the protection of the integrity of all types and forms of lawfully created computers, computer systems, and computer data is vital to the protection of the privacy of individuals"

Penal Code section 502 subdivision (a).

The statute's plain language illustrates the Legislature's determination that the acts criminalized by the section constitute serious violations of the fundamental privacy rights of individuals, rights protected by the United States and California Constitutions. Crimes of moral turpitude have been described as those that involve "baseness, vileness, or depravity in the private and social duties which a man owes to his fellowmen or to society in general, contrary to the accepted and customary rule of right and duty between man and man." *People v. Forster* (1994) 29 Cal.App.4th 1746, 1757. Clearly, Penal Code section 502 offenses necessarily involve moral turpitude.

³ The employee was unaware of Respondent's criminal conviction.

In disciplinary proceedings, where the conviction of a crime does not establish moral turpitude *per se*, the Complainant may consider the particular circumstances of the underlying offense to determine if the conviction involved moral turpitude. *Padilla v. State Personnel Board* (1992) 8 Cal.App.4th 1136, 1140-1141; *In re Kelley* (1990) 52 Cal.3d 487. Respondent's act of accessing his ex-girlfriend's private financial information was a criminal act for which he was convicted under Penal Code section 502 (c) (7). It was also dishonest. Respondent admitted at the hearing in this matter that his permissible access to individual credit reports was limited to mortgage lending purposes, but that this was not the reason he accessed his ex-girlfriends computer information. Rather, he accessed her credit information to help him collect a debt and as a part of the harassment that followed the breakup of their romantic relationship. Respondent knew that he did not have her permission to access her computer information. The access was dishonest. Respondent's crime violated precisely the rights Section 502 was intended to protect, privacy rights and duties "which a man owes to his fellowmen or to society in general, contrary to the accepted and customary rule of right and duty between man and man." It was a crime of moral turpitude.

It should be noted that the specific subsection of Penal Code section 502 of which Respondent was convicted (Penal Code section 502, subdivision (c) (7)) can be charged as a felony under appropriate circumstances. The degree and penalty for such a violation is set forth in Penal Code section 502, subdivision (d) (3). In Respondent's case, the plea agreement set the degree of the offense as a misdemeanor – Penal Code section 502, subdivision (d) (3) (B). At the misdemeanor level, the offense involved the expenditure of the victim in an amount not greater than \$5,000. Clearly, the legislature in enacting the subsection (c) (7) recognized the seriousness of the offense consistent with the legislative findings.

4. Respondent's criminal conviction, pursuant to California Code of Regulations, title 10, section 2910, subdivisions (8), is substantially related to the qualifications, functions, or duties of a licensee of the Department in that it involved the doing of an unlawful act with the intent of conferring an economic benefit upon Respondent.

5. The Department's Criteria of Rehabilitation, set forth in California Code of Regulations, title 10, section 2912, provides factors to be considered for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee. It has been more than two years since Respondent's conviction; he has no history of other convictions; he paid all restitution, fines and fees associated with his criminal case; his probation was terminated early and the matter has been expunged from his record; he has corrected his business practices to the extent he has informed himself of the limits of his credit report service access and it is most unlikely that he will ever use the service beyond checking the credit for a prospective borrower who has given advance permission for the inquiry; he no longer associates with Cass and has had no contact with her since his criminal matter was resolved, further,

they entered into an agreement specifying all contact between them would be through their attorneys; he is married and enjoys a good relationship with his college-age son whom Respondent supports; Respondent is involved with organizations that promote the preservation of wildlife; and has taken full responsibility for the fact that his actions were in violation of law and has offered assurances that he will not resort to this type of collection effort in the future. From the foregoing, it appears that Respondent is making good progress in complying with the Department's criteria. Additional time to insure this compliance is necessary from the standpoint of protecting the public.

Under Business and Professions Code section 10177, the degree of discipline is a matter that is within the discretion of the Real Estate Commissioner. The Department - needs to ensure that its licensees handle private information in accordance with the law and with the utmost integrity. Respondent's crime - the unauthorized computer access of private, highly sensitive financial information - is precisely the sort of threat to the public which the Department is charged with preventing. In order to assure that the public is protected from any relapse by Respondent in his compliance with the Department's regulations, a suspended license stayed for a period of time provides the Department with appropriate controls in this case. This revised conclusion takes into consideration the fact that Respondent was convicted of a misdemeanor and not a felony as stated in the original proposed decision in this matter.

ORDER

All licenses and licensing rights of Respondent John David Runkle under the Real Estate Law are suspended for a period of six months from the effective date of, this Decision; provided, however, that said six month suspension shall be stayed for one (1) year upon the following terms and conditions:

1. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and
2. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary; action occurred within one (1) year of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

DATED: March 7, 2008.



N. GREGORY TAYLOR
Administrative Law Judge
Office of Administrative Hearings

FILED
OCT 23 2007
DEPARTMENT OF REAL ESTATE

By Laura B. Olson

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) No. H-33283 LA
JOHN DAVID RUNKLE,) L-2006100642
Respondent.)

NOTICE OF ORDER GRANTING RECONSIDERATION AND
REMANDING CASE TO ADMINISTRATIVE LAW JUDGE FOR
RECONSIDERATION OF FINDINGS AND ORDER
(Sections 11521(b) and 11517(c) of the Government Code)

TO: JOHN DAVID RUNKLE, Respondent:

YOU ARE HEREBY NOTIFIED that On August 29 2007, a Decision was rendered in the above-entitled matter. Said Order was to become effective on September 25, 2007, and was stayed by separate Order to October 25, 2007.

On October 5, 2007, Respondent petitioned for reconsideration of the Decision of August 29, 2007.

I find that there is good cause to reconsider the Decision of August 29, 2007. Reconsideration is granted.

1 IT IS HEREBY ORDERED, in accordance with Sections
2 11521(b) and 11517(c) of the Government Code, that this case be
3 referred to N. GREGORY TAYLOR, Administrative Law Judge of the
4 Office of Administrative Hearings.

5 IT IS SO ORDERED

6 10/23/07
JEFF DAVI
Real Estate Commissioner

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24 cc: John David Runkle
25 Edward Alexander Hoffman, Esq.
26 Elisa B. Wolfe-Donato
27 Maria Suarez
Sacto
OAH

By C

STATE OF CALIFORNIA

* * *

OAH NO. L-2006100642

DOLORES WEEKS
Regional Manager

1 LISSETE GARCIA, Counsel (SBN #211552)
2 Department of Real Estate
3 320 West Fourth Street, #350
4 Los Angeles, California 90013

5 (213) 576-6982
6 (213) 576-6914

FILED
SEP - 5 2007
DEPARTMENT OF REAL ESTATE

By C.A.

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * * *

11 In the Matter of the Accusation of) No. H-33283 LA
12) L-2006100642
13 JOHN DAVID RUNKLE,)
14 Respondent.)

15 DECISION AFTER RECONSIDERATION

16 On May 31, 2007, a Decision was rendered herein by the
17 Real Estate Commissioner which revoked the real estate broker
18 license and licensing rights of Respondent JOHN DAVID RUNKLE
19 ("Respondent"), but granted rights to a restricted broker
20 license, subject to certain terms and conditions. Said Decision
21 was to become effective on June 25, 2007, and was stayed by
22 separate Order to July 25, 2007.

23
24 On June 15, 2007, Complainant petitioned for
25 reconsideration of said Decision. Both Respondent and
26 Complainant submitted Arguments for Reconsideration. I have
27 considered the parties' arguments for reconsideration and

1 concluded that good cause has been presented for reconsideration
2 of the Decision of May 31, 2007, for the limited purpose of
3 correcting any errors and determining whether the disciplinary
4 action therein imposed should be reduced. The Order Granting
5 Reconsideration was issued on July 19, 2007. Said Order allowed
6 Respondent to file written argument in further support of his
7 petition for reconsideration by July 30, 2007, and Complainant
8 had ten days thereafter to file any written reply to Respondent's
9 argument.

10 On July 30, 2007, Respondent submitted his Brief After
11 Grant of Reconsideration urging no discipline, or a less
12 stringent penalty than the revocation of his license with
13 issuance of a restricted license, called for in the Decision of
14 May 31, 2007. On August 6, 2007, Complainant submitted a reply
15 brief to Respondent's Brief After Grant of Reconsideration. On
16 August 8, 2007, Respondent submitted a further brief after grant
17 of reconsideration in response to Complainant's reply brief.
18 Said further argument is tardy based on the Order Granting
19 Reconsideration of July 19, 2007, and will not be considered as
20 part of the record.
21

22 I have reconsidered the May 31, 2007, Decision, and
23 have given careful consideration to this case, including the
24 transcript of proceedings of the hearing of February 22, 2007,
25 and the further arguments and briefs submitted by the parties.
26
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1 I have determined that the May 31, 2007, Decision is
2 not appropriate with respect to stating that the April 26, 2007,
3 Proposed Decision of Administrative Law Judge ("ALJ") N. Gregory
4 Taylor suspends or revokes one or more real estate licenses on
5 grounds of knowingly making a false statement of fact required to
6 be revealed in an application for license.

7 In his Proposed Decision, the ALJ found cause did not
8 exist, pursuant to Business and Professions Code Section 498
9 and/or Section 10177, subdivision (a), to suspend or revoke
10 Respondent's real estate licenses and licensing rights in that
11 Respondent did disclose his criminal conviction on his license
12 renewal application.

13 I have also determined that the Factual Findings and
14 Legal Conclusions in the ALJ's Proposed Decision are not
15 appropriate with respect to Factual Finding No. 7 and Legal
16 Conclusion No. 3, and they are not adopted as the Factual
17 Findings and Legal Conclusions of the Real Estate Commissioner in
18 this proceeding.
19

20 I.

21 Administrative Law Judge N. Gregory Taylor, Office of
22 Administrative Hearings, State of California, heard this matter
23 in Los Angeles, California on February 22, 2007.

24 Jennifer A. Granat, Staff Counsel, represented Maria
25 Suarez ("Complainant"), a Deputy Real Estate Commissioner for the
26 Department of Real Estate ("Department"), State of California.
27

1 Mary E. Work, Attorney at Law, represented John David
2 Runkle ("Respondent") who was present at the hearing.

3 At the beginning of the hearing, Respondent made a
4 motion to strike Paragraphs IV and V of the Accusation. These
5 paragraphs allege that Respondent failed to reveal his criminal
6 conviction on his license renewal application to the Department.
7 It was decided to address this issue as part of the decision to
8 be rendered in the case.

9 Oral and documentary evidence was received, and the
10 matter was argued. The record was held open following the
11 hearing to permit counsel to present closing briefs specifically
12 including the issue of moral turpitude. On March 9, 2007,
13 Complainant filed her brief on moral turpitude. Respondent filed
14 his brief on the issue of moral turpitude on March 22, 2007. On
15 March 30, 2007, Complainant filed her reply brief re: moral
16 turpitude. The case was submitted for decision on March 30,
17 2007.
18

19 II

20 FACTUAL FINDINGS

21 1. Complainant, Maria Suarez, a Deputy Real Estate
22 Commissioner for the Department of Real Estate, State of
23 California, filed the Accusation in this proceeding in her
24 official capacity.

25 2. At all times mentioned herein, Respondent was and
26 is presently licensed as a real estate broker under the Real
27

1 Estate Law, Part 1 of Division 4 of the Business and Professions
2 Code. His broker license expires on October 17, 2008, unless
3 renewed.¹

4 3. Respondent was originally licensed by the
5 Department as a real estate salesperson on August 8, 1989, and as
6 a broker on July 2, 1992.

7 4. On October 13, 2004, Respondent filed a Broker
8 Renewal Application with the Department. This application was
9 completed in handwriting. Respondent answered "Yes" to Question
10 3 on the application indicating that he had been convicted of a
11 violation of law. He also supplied information on his criminal
12 conviction in response to Question 22.

13 5. On October 15, 2004, Respondent filed a second
14 Broker Renewal Application with the Department. This application
15 was filed using an on-line computer connection. In order to get
16 the Department's computer to accept the application, Respondent
17 had to answer "No" to Question 3 regarding whether the applicant
18 had been convicted of a crime. (If a person answered yes to the
19 question, the person was told to manually file the application.)
20 Respondent's reason for filing the second application was to
21 insure that there was no interruption in the effectiveness of his
22 license. Respondent is a broker. He has several offices and a
23 number of real estate salespersons working under his license. If
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26
27 ¹ Respondent also has an officer license from the Department which expires on
February 2, 2009.

1 there was a break in the continuity of his license, all of his
2 salespeople would be unable to work under his license. Both
3 applications were for the renewal of the same license. A
4 manually completed license takes longer for the Department to
5 process.

6 6. Respondent's filing of the two applications, taken
7 as a whole; disclose his criminal conviction for purposes of
8 informing the Department of that occurrence. There was no intent
9 of Respondent to deceive the Department concerning his
10 conviction.

11 7. On or about July 29, 2004, in the Superior Court of
12 California, County of San Bernardino, in Case No. FSB038254, as
13 part of a plea agreement, Respondent pleaded nolo contendere to
14 and was convicted of violating Penal Code Section 502(c)(7)
15 (knowingly and without permission access or cause to be accessed
16 any computer, computer system, or computer network), a
17 misdemeanor. Respondent's plea was to a LIO (a lesser included
18 offense) in Count 1 of the felony complaint. The pronouncement
19 of judgment was ordered withheld. The court placed Respondent on
20 Conditional and Revocable Release for a period of thirty-six
21 months upon certain terms and conditions including paying a \$110
22 fine and having no contact with the victim.

24 8. On January 30, 2006, the Court found that
25 Respondent had fulfilled the terms and conditions of his
26
27

1 probation and expunged the conviction pursuant to Penal Code
2 Section 1203.4.

3 9. The ALJ found that the facts and circumstances
4 underlying Respondent's conviction are as follows: Respondent
5 and a woman named Cass worked together at a real estate office.
6 Cass stopped working with Respondent. Subsequently, in 2001-
7 2002, they began a romantic relationship. During this time,
8 Respondent loaned Cass money for an emergency operation. Cass
9 repaid only a portion of the loaned amount. Early in 2002, their
10 relationship ended acrimoniously. Both Respondent and Cass
11 engaged in harassing behavior toward one another. Respondent
12 decided to sue Cass for the unpaid balance on his loan to her.
13 Respondent asserts that, prior to commencing the litigation, he
14 ran a credit check on Cass to determine if she had sufficient
15 assets to make a lawsuit worthwhile. Checking a person's credit
16 for this purpose is not authorized by law and was an invasion of
17 Cass' privacy. Respondent testified that he felt that such a
18 check was legally permissible but pled guilty to a single count
19 of unauthorized acquisition of credit information due to the
20 severe penalty he faced if otherwise convicted. Respondent
21 testified at the hearing that he has taken full responsibility of
22 his actions that resulted in his conviction.
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24 10. Since then, Respondent and Cass have entered into
25 a formal stipulation agreeing to have no contact with each other
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1 and that any communication between them will be conducted through
2 their attorneys.

3 11. Respondent testified that he owns the largest real
4 estate office in the City of San Bernardino. He also has real
5 estate offices in six other states. These offices handle
6 residential sales and mortgages.

7 12. At the hearing, Respondent testified that as a
8 result of his conviction, Respondent's attitude regarding the use
9 of credit reports has changed. He now considers ordering such a
10 report to be a very serious matter. He realizes the importance
11 of getting written authorization to make requests for credit
12 information.

13 13. Respondent also testified that as a result of his
14 conviction, Respondent has changed the procedures in his office
15 to insure that credit reports are ordered only for legally
16 authorized purposes. Such reports can only be ordered by the
17 office managers.
18

19 14. Respondent has no other criminal convictions.

20 15. No other administrative actions have been filed
21 against Respondent's real estate licenses.

22 16. Respondent testified to the following:

23 Respondent served three years in the Army and was
24 awarded the Army Achievement Medal.
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Respondent attended California State University Fullerton majoring in business and is ten credits short of being eligible to graduate.

Respondent is now married. He and his wife live in Montana. His 20-year-old son spends summers with him.

Respondent works with a preservation group seeking to protect elk and grizzly bears.

17. An executive vice-president of a title company, who has known Respondent for more than five years and has worked with him, testified for Respondent as a character witness. In her opinion, Respondent has a good reputation and is honest. She testified that she was aware of Respondent's criminal conviction and it did not adversely affect her opinion of him.

18. An employee of Respondent's real estate office testified as a character witness. He stated that Respondent had taught him the real estate business and had always been there for the employee. He would recommend Respondent to everyone.

III

LEGAL CONCLUSIONS

1. These proceedings are brought under the provisions of Business and Professions Code Section 10100 et seq. and Government Code Sections 11500 through 11528.

2. Cause does not exist, pursuant to Business and Professions Code Section 498 and/or 10177, subdivision (a), to suspend or revoke Respondent's real estate licenses and licensing

1 rights in that Respondent did disclose his criminal conviction on
2 his license renewal application to the Department.

3 3. Grounds exist to revoke or suspend Respondent's
4 real estate broker license under Business and Professions Code
5 Section 10177(b) and Section 490 for conviction of a crime
6 involving moral turpitude which is substantially related to the
7 qualifications, functions, and duties of a real estate licensee.
8 Respondent's misdemeanor conviction for violating Penal Code
9 Section 502(c)(7) (knowingly and without permission access or
10 cause to be accessed any computer, computer system, or computer
11 network) involves moral turpitude. Penal Code Section 502 was
12 enacted in 1987 as part of the "Comprehensive Computer Data
13 Access and Fraud Act." It is included in the Penal Code in Part
14 1, Title 13, "Of Crimes Against Property", Chapter 5 "Larceny
15 (Theft)." With regard to Penal Code Section 502, subdivision
16 (a), the Legislature found:

17
18 "It is the intent of the legislature in enacting
19 this section to expand the degree of protection
20 afforded to individuals . . . from tampering,
21 interference, damage and unauthorized access to
22 lawfully created computer data and computer systems.***
23 The Legislature further finds and declares that the
24 protection of the integrity of all types and forms of
25 lawfully created computers, computer systems, and
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1 computer data is vital to the protection of privacy
2 of individuals..."

3 The statute's plain language illustrates the
4 Legislature's determination that the acts criminalized by the
5 section constitute serious violations of the fundamental privacy
6 rights of individuals, rights protected by the United States and
7 California Constitutions. Crimes of moral turpitude have been
8 described as those that involve "baseness, vileness, or depravity
9 in the private and social duties which a man owes to his
10 fellowmen, or to society in general, contrary to the accepted and
11 customary rule of right and duty between man and man." *People v.*
12 *Forster*, 29 Cal. App. 4th 1746, 1757 (1994).

13 In disciplinary proceedings, where the conviction of a
14 crime does not establish moral turpitude per se, the Complainant
15 may consider the particular circumstances of the underlying
16 offense to determine if the conviction involved moral turpitude.
17 *Padilla v. State Personnel Board* (1992) 8 Cal.App.4th 1136, 1140-
18 1141; *In re Kelley* (1990) 52 Cal.3d 487. Respondent's act of
19 accessing his ex-girlfriend's private financial information was a
20 criminal act for which he was convicted under Penal Code Section
21 502(c)(7). It was also dishonest. Respondent admitted at
22 hearing that his permissible access to individual credit reports
23 was limited to mortgage lending purposes, but that this was not
24 the reason he accessed his ex-girlfriend's credit information.
25 Rather, he accessed her credit information to help him collect a
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1 debt. Respondent knew he did not have her permission. The
2 access was dishonest. Respondent's crime violated precisely the
3 rights Section 502 was intended to protect, privacy rights and
4 duties "which a man owes to his fellowmen, or to society in
5 general, contrary to the accepted and customary rule of right and
6 duty between man and man." It was a crime of moral turpitude.

7 4. Respondent's criminal conviction, pursuant to
8 California Code of Regulations, Title 10, Section 2910,
9 subdivisions (4) and (8), is substantially related to the
10 qualifications, functions, or duties of a licensee of the
11 Department in that it involved misrepresentation to achieve an
12 end and the doing of an unlawful act with the intent of
13 conferring an economic benefit upon Respondent.

14 5. The Department's Criteria of Rehabilitation, set
15 forth in California Code of Regulations, Title 10, Section 2912,
16 provides factors to be considered for the purpose of evaluating
17 the rehabilitation of a licensee against whom an administrative
18 disciplinary proceeding for revocation or suspension of the
19 license has been initiated on account of a crime committed by the
20 licensee. Respondent has met most of the applicable criteria.
21 It has been more than two years since Respondent's conviction; he
22 has no history of other convictions; he paid all restitution,
23 fines and fees associated with his criminal case; his probation
24 was terminated early and the matter has been expunged from his
25 record; he has corrected his business practices to the extent he
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1 has informed himself of the limits of his credit report service
2 access and it is most unlikely that he will ever use the service
3 beyond checking the credit for a prospective borrower who has
4 given advance permission for the inquiry; he no longer associates
5 with Ms. Cass and has had no contact with her since his criminal
6 matter was resolved; he is married and enjoys a good relationship
7 with his college-age son whom Respondent supports; Respondent is
8 involved with organizations that promote the preservation of
9 wildlife; and has taken full responsibility for the fact that his
10 actions were in violation of law and has offered assurances that
11 he will not resort to this type of collection effort in the
12 future.

13 Under Business and Professions Code Section 10177, the
14 degree of discipline is a matter that is within the discretion of
15 the Real Estate Commissioner. The Department needs to ensure
16 that its licensees handle private information in accordance with
17 the law, and with the utmost integrity. Respondent's crime - the
18 unauthorized computer access of private, highly sensitive
19 financial information - is precisely the sort of threat to the
20 public which the Department is charged with preventing. In order
21 to assure that the public is protected from any relapse by
22 Respondent in implementing these assurances, a restricted license
23 is appropriate.
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IV

ORDER

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3 All real estate licenses and licensing rights of
4 Respondent JOHN DAVID RUNKLE are hereby revoked; provided,
5 however, a restricted real estate broker license shall be issued
6 to Respondent pursuant to Section 10156.5 of the Business and
7 Professions Code if Respondent makes application therefor and
8 pays to the Department of Real Estate the appropriate fee for the
9 restricted license within 90 days from the effective date of this
10 Decision. The restricted license issued to Respondent shall be
11 subject to all of the provisions of Section 10156.7 of the
12 Business and Professions Code and to the following limitations,
13 conditions and restrictions imposed under authority of Section
14 10156.6 of that Code:

15 1. The restricted license issued to Respondent may be
16 suspended prior to hearing by Order of the Real Estate
17 Commissioner in the event of Respondent's conviction or plea of
18 nolo contendere to a crime which is substantially related to
19 Respondent's fitness or capacity as a real estate licensee.

20 2. The restricted license issued to Respondent may be
21 suspended prior to hearing by Order of the Real Estate
22 Commissioner on evidence satisfactory to the Commissioner that
23 Respondent has violated provisions of the California Real Estate
24 Law, the Subdivided Lands Law, Regulations of the Real Estate
25 Commissioner or conditions attaching to the restricted license.
26
27

1 3. Respondent shall not be eligible to apply for the
2 issuance of an unrestricted real estate license nor for the
3 removal of any of the conditions, limitations or restrictions of
4 a restricted license until two years have elapsed from the
5 effective date of this Decision.

6 4. Respondent shall, within nine months from the
7 effective date of this Decision, present evidence satisfactory to
8 the Real Estate Commissioner that Respondent has, since the most
9 recent issuance of an original or renewal real estate license,
10 taken and successfully completed the continuing education
11 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
12 for renewal of a real estate license. If Respondent fails to
13 satisfy this condition, the Commissioner may order the suspension
14 of the restricted license until the Respondent presents such
15 evidence. The Commissioner shall afford Respondent the
16 opportunity for a hearing pursuant to the Administrative
17 Procedure Act to present such evidence.
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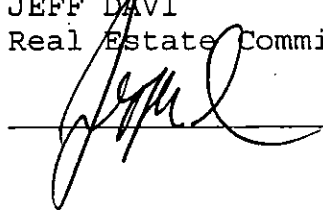
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1 The right to reinstatement of a revoked real estate
2 license or to the reduction of a suspension is controlled by
3 Section 11522 of the Government Code. A copy of Section 11522
4 and a copy of the Commissioner's Criteria of Rehabilitation are
5 attached hereto for the information of Respondent.

6 This Decision shall become effective at 12 o'clock noon
7 on September 25, 2007.

8 IT IS SO ORDERED

9 D-29-07
10 JEFF DAVI
11 Real Estate Commissioner
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FILED
JUL 23 2007
DEPARTMENT OF REAL ESTATE

By C. R.

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-33283 LA
JOHN DAVID RUNKLE,)	L-2006100642
Respondent.)	

ORDER GRANTING RECONSIDERATION

On May 31, 2007, a Decision was rendered in the above-entitled matter. Said Decision was to become effective on June 25, 2007, and was stayed by separate Order to July 25, 2007.

On June 15, 2007, Complainant petitioned for reconsideration of the Decision of May 31, 2007.

I find that there is good cause to reconsider the Decision of May 31, 2007. Reconsideration is granted.

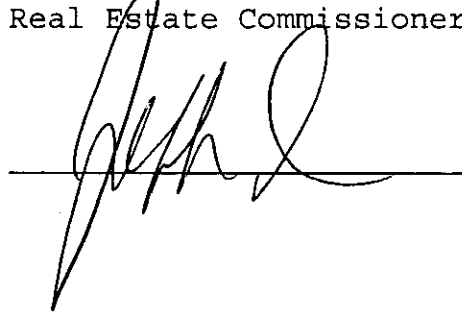
Respondent shall have until July 30, 2007, in which to file written argument in further support of his petition for reconsideration. Counsel for the Department of Real Estate

1 shall submit any written reply to said argument within ten (10)
2 days thereafter.

3 IT IS SO ORDERED 7-19, 2007.

4 JEFF DANI
5 Real Estate Commissioner

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A handwritten signature in black ink, appearing to read 'Jeff Dani', is written over a horizontal line. The signature is stylized with a large, looping 'J' and a cursive 'Dani'.

FILED
JUN 14 2007
DEPARTMENT OF REAL ESTATE

By C. J. [illegible]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
JOHN DAVID RUNKLE,) DRE NO. H-33283 LA
Respondent.) OAH NO. L-2006100642

ORDER STAYING EFFECTIVE DATE

On May 31, 2007, a Decision was rendered in the above-entitled matter to become effective June 25, 2007.

IT IS HEREBY ORDERED that the effective date of the Decision of May 31, 2007, is stayed for a period of 30 days to allow for the filing of a petition for reconsideration.

The Decision of May 31, 2007, shall become effective at 12 o'clock noon on July 25, 2007.

DATED: June 14, 2007.

JEFF DAVI
Real Estate Commissioner

By:

DOLORES WEEKS
Regional Manager

FILED

JUN - 4 2007

DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

BY: James B. Don

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-33283 LA
JOHN DAVID RUNKLE,)	L-2006100642
Respondent.)	

DECISION

The Proposed Decision dated April 26, 2007, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Pursuant to Section 11517(c)(2)(C) of the Government Code, the following correction is made to the Proposed Decision:

Page 1, last paragraph, line 4, the words "March 30, 2007" are replaced by the words "March 22, 2007". Complainant filed her reply brief on March 30, 2007".

The Decision suspends or revokes one or more real estate licenses on grounds of conviction of a crime and knowingly making a false statement of fact required to be revealed in an application for license.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on JUN 25 2007.

IT IS SO ORDERED

JEFF DAVI
Real Estate Commissioner

John R. Liberator

BY: John R. Liberator
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAY 31 2007
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of:

JOHN DAVID RUNKLE.,

Respondent.

Case No. H-33283 LA

OAH No. L 2006100642

By Cz

PROPOSED DECISION

Administrative Law Judge N. Gregory Taylor, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on February 22, 2007.

Jennifer A. Granat, Staff Counsel, represented Maria Suarez, (Complainant), a Deputy Real Estate Commissioner in the Department of Real Estate (Department), State of California.

Mary E. Work, Attorney at Law, represented John David Runkle (Respondent) who was present during the hearing.

At the beginning of the hearing, Respondent made a motion to strike Paragraphs IV and V of the Accusation. These paragraphs allege that Respondent failed to reveal his criminal conviction on his license renewal application to the Department. It was decided to address this issue as part of the decision to be rendered in this case.

Oral and documentary evidence was received, and the matter was argued. The record was held open following the hearing to permit counsel to present closing briefs specifically including the issue of moral turpitude. On March 9, 2007, Complainant filed her brief on moral turpitude. Respondent filed his brief on March 30, 2007. The case was submitted for decision on March 30, 2007.

FACTUAL FINDINGS

1. Complainant filed the Accusation in this proceeding in her official capacity.
2. At all times mentioned herein, Respondent was and is presently licensed by the Department as a real estate broker under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code. His broker license expires on October 17, 2008, unless renewed.¹
3. Respondent was originally licensed by the Department as a real estate salesperson on August 8, 1989 and as broker on July 2, 1992.
4. On October 13, 2004, Respondent filed a Broker Renewal Application with the Department. This application was completed in handwriting. Respondent answered "Yes" to Question 3 on the application indicating that he had been convicted of a violation of law. He also supplied information on his criminal conviction in response to Question 22.
5. On October 15, 2004, Respondent filed a second Broker Renewal Application with the Department. This application was filed using an on-line computer connection. In order to get the Department's computer to accept the application, Respondent had to answer "No" to Question 3 regarding whether the applicant had been convicted of a crime. (If a person answered yes to the question, the person was told to manually file the application.) Respondent's reason for filing the second application was to insure that there was no interruption in the effectiveness of his license. Respondent is a broker. He has several offices and a number of real estate salespersons working under his license. If there was a break in the continuity of his license, all of his salespeople would be unable to work under his license. Both applications were for the renewal of the same license. A manually completed license takes longer for the Department to process.
6. Respondent's filing of the two applications, taken as a whole; disclose his criminal conviction for purposes of informing the Department of that occurrence. There was no intent of Respondent to deceive the Department concerning his conviction.
7. On July 29, 2004 in the California Superior Court, County of San Bernardino, Respondent, upon a plea of nolo contendere, was convicted of violating Penal Code section 502, subdivision (c), access and use of credit information to locate and harass a victim, a felony. The pronouncement of judgment was ordered withheld. The court placed Respondent on Conditional and Revocable Release for a period of thirty-six months upon certain terms and conditions including paying a \$110 fine and having no contact with the victim.

¹ Respondent also has an officer license from the Department which expires on February 2, 2009.

8. On January 30, 2006, the Court found that Respondent had fulfilled the terms and conditions of his probation and expunged the conviction pursuant to Penal Code section 1203.4.

9. The facts and circumstances leading to Respondent's conviction are as follows: Respondent and a woman named Cass worked together at a real estate office. Cass stopped working with Respondent. Subsequently, in 2001-2002, they began a romantic relationship. During this time, Respondent loaned Cass money for an emergency operation. Cass repaid only a portion of the loaned amount. Early in 2002, their relationship ended acrimoniously. Both Respondent and Cass engaged in harassing behavior toward one another. Respondent decided to sue Cass for the unpaid balance on his loan to her. Respondent asserts that, prior to commencing the litigation he ran a credit check on Cass to determine if she had sufficient assets to make a lawsuit worthwhile. Checking a person's credit for this purpose is not authorized by law and was an invasion of Cass' privacy. Respondent felt that such a check was legally permissible but pled guilty to a single count of unauthorized acquisition of credit information due to the severe penalty he faced if otherwise convicted. Respondent has taken full responsibility of his actions that resulted in his conviction.

10. Since then, Respondent and Cass have entered into a formal stipulation agreeing to have no contact with each other and that any communication between them will be conducted through their attorneys.

11. Respondent owns the largest real estate office in the City of San Bernardino. He also has real estate offices in six other states. These offices handle residential sales and mortgages.

12. As a result of his conviction, Respondent's attitude regarding the use of credit reports has changed. He now considers ordering such a report to be a very serious matter. He realizes the importance of getting written authorization to make requests for credit information.

13. As a result of his conviction, Respondent has changed the procedures in his office to insure that credit reports are ordered only for legally authorized purposes. Such reports can only be ordered by the office managers.

14. Respondent has no other criminal convictions.

15. No other administrative actions have been filed against Respondent's real estate licenses.

16. Respondent served three years in the Army and was awarded the Army Achievement Medal.

17. Respondent attended California State University Fullerton majoring in business and is ten credits short of being eligible to graduate.

18. Respondent is now married. He and his wife live in Montana. His 20 year old son spends summers with him.

19. Respondent works with a preservation group seeking to protect elk and grizzly bears.

20. An executive vice-president of a title company, who has known Respondent for more than five years and has worked with him, testified for Respondent as a character witness. In her opinion, Respondent has a good reputation and is honest. She was aware of Respondent's criminal conviction and it did not adversely affect her opinion of him.

21. An employee of Respondent's real estate office testified as a character witness. He stated that Respondent had taught him the real estate business and had always been there for the employee. He would recommend Respondent to everyone.²

LEGAL CONCLUSIONS

1. These proceedings are brought under the provisions of Business and Professions Code section 10100 et seq. and Government Code sections 11500 through 11528.

2. Cause does not exist, pursuant to Business and Professions Code section 498 and/or 10177, subdivision (a), to suspend or revoke Respondent's real estate licenses and licensing rights in that Respondent did disclose his criminal conviction on his license renewal application to the Department.

3. Respondent's felony conviction for violating Penal Code section 502, subdivision (c), access and use of credit information to locate and harass a victim, involves moral turpitude. Penal Code section 502 was enacted in 1987 as part of the "Comprehensive Computer Data Access and Fraud Act." It is included in the Penal Code in Part 1, Title 13, "Of Crimes Against Property", Chapter 5 "Larceny (Theft)." With regard to Penal Code section 502, subdivision (a), the Legislature found:

"It is the intent of the legislature in enacting this section to expand the degree of protection afforded to individuals . . . from tampering, interference, damage and unauthorized access to lawfully created computer data and computer systems. * * * The Legislature further finds and declares that the protection of the integrity of all types and forms of lawfully created computers, computer systems, and

² The employee was unaware of Respondent's criminal conviction.

computer data is vital to the protection of the privacy of individuals . . .

The statute's plain language illustrates the Legislature's determination that the acts criminalized by the section constitute serious violations of the fundamental privacy rights of individuals, rights protected by the United States and California Constitutions. Crimes of moral turpitude have been described as those that involve "baseness, vileness, or depravity in the private and social duties which a man owes to his fellowmen or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*People v. Forster* (1994) 29 Cal.App.4th 1746, 1757.) Clearly, Penal Code section 502 offenses necessarily involve moral turpitude.

4. Respondent's criminal conviction, pursuant to California Code of Regulations, title 10, section 2910, subdivisions (4) and (8), is substantially related to the qualifications, functions, or duties of a licensee of the Department in that it involved misrepresentation to achieve an end and the doing of an unlawful act with the intent of conferring an economic benefit upon Respondent.

5. The Department's Criteria of Rehabilitation, set forth in California Code of Regulations, title 10, section 2912, provides factors to be considered for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee. Respondent meets the applicable criteria. It has been more than two years since Respondent's conviction; he has no history of other convictions; he paid all restitution, fines and fees associated with his criminal case; his probation was terminated early and the matter has been expunged from his record; he has corrected his business practices to the extent he has informed himself of the limits of his credit report service access and it is most unlikely that he will ever use the service beyond checking the credit for a prospective borrower who has given advance permission for the inquiry; he no longer associates with Ms. Cass and has had no contact with her since his criminal matter was resolved; he is married and enjoys a good relationship with his college-age son whom Respondent supports; Respondent is involved with organizations that promote the preservation of wildlife; and has taken full responsibility for the fact that his actions were in violation of law and has offered assurances that he will not resort to this type of collection effort in the future. In order to assure that the public is protected from any relapse by Respondent in implementing these assurances, a restricted license is appropriate.

ORDER

All licenses and licensing rights of Respondent John David Runkle under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted

license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.

4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: April 26, 2007.


N. GREGORY TAYLOR
Administrative Law Judge
Office of Administrative Hearings

Telephone: (213) 576-6982
(Direct) (213) 576-6907

By [Signature]

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-33283 LA
JOHN DAVID RUNKLE,) A C C U S A T I O N
Respondent.)

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II

CONVICTION

On or about July 29, 2004, in the Superior Court of California, County of San Bernardino, Case No. FSB038254, Respondent JOHN DAVID RUNKLE was convicted of one (1) count of violating California Penal Code Section 502(c)(7) (unauthorized computer access), a crime involving moral turpitude which is substantially related under Section 2910, Title 10, Chapter 6, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

III

The crime of which Respondent was convicted, as set forth above, constitutes cause under California Business and Professions Sections Code 490 and/or 10177(b) for the suspension or revocation of Respondent's license and license rights under the Real Estate Law.

IV

FAILURE TO REVEAL CONVICTION

Question 3 of the Respondent's Broker Renewal Application, completed by him on or about October 15, 2004, asks the following: "WITHIN THE PAST FOUR YEAR PERIOD, HAVE YOU BEEN CONVICTED OF ANY VIOLATION OF LAW? CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY OMIT MINOR TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE." Respondent answered "No" to

1 Question No. 3 on his Broker Renewal Application, and failed to
2 reveal the conviction described above.

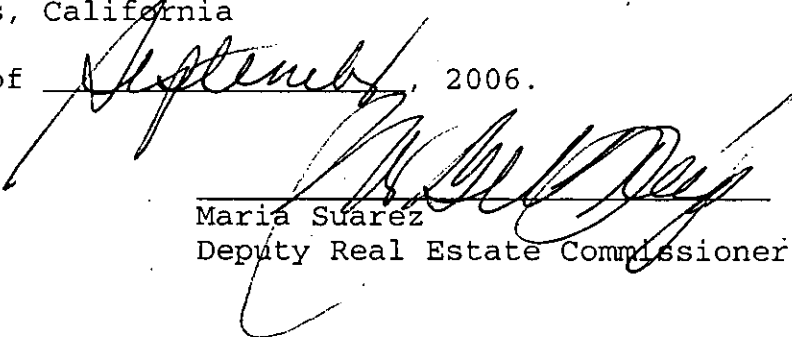
3 V

4 Respondent's failure to reveal the conviction set
5 forth herein in his license application is cause to suspend or
6 revoke his present real estate license and license rights
7 pursuant to Business and Professions Code Sections 498 and/or
8 10177(a).

9 WHEREFORE, Complainant prays that a hearing be
10 conducted on the allegations of this Accusation and that upon
11 proof thereof, a decision be rendered imposing disciplinary
12 action against all licenses and/or license rights of Respondent,
13 JOHN DAVID RUNKLE, under the Real Estate Law and for such
14 other and further relief as may be proper under applicable
15 provisions of law.

16 Dated at Los Angeles, California

17 this 22nd day of September, 2006.

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21 Maria Suarez
22 Deputy Real Estate Commissioner
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25

26 cc: John David Runkle
27 Maria Suarez
Sacto.